

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Crim. No.: 03-187 (JLL)
)	
HERBERT S. POWELL,)	ORDER
)	
Defendant.)	
)	

LINARES, District Judge.

This matter comes before the Court on the letter [CM/ECF #136] filed by Defendant Herbert S. Powell ("Powell" or "Defendant") on May 4, 2010. No oral argument was heard. Fed. R. Civ. P. 78.


In his letter, Powell seeks to prevent his deportation from the United States under the rule announced by the United States Supreme Court in Padilla v. Kentucky, 130 S. Ct. 1473 (2010). In Padilla, the Supreme Court found that counsel could provide ineffective assistance to a criminal defendant by failing to advise a defendant of the possibility of deportation after entering a guilty plea. 130 S. Ct. at 1486.

As Padilla provides Powell only with a means to collaterally attack his criminal conviction, and does not provide him a direct defense to any potential deportation he faces, this Court finds that his letter must be construed as an attempt to file a habeas petition under § 2255. Powell asserts in his letter that he has already exhausted his first § 2255 petition, and, therefore,

his letter is an attempt to file a successive § 2255 petition. Successive § 2255 petitions “must be certified . . . by a panel of the appropriate court of appeals to contain” newly discovered evidence or reference to a new, retroactively applied rule of constitutional law. 28 U.S.C. § 2255(h). As Powell’s petition has not been certified by the Third Circuit Court of Appeals, this Court is unable to review his petition. Additionally, as Powell’s letter does not contain the appropriate materials under Local Appellate Rule 22.5, his letter is not ripe to be forwarded to the Third Circuit Court of Appeals as an application for authorization to file a successive petition under § 2255. See United States v. Brown, No. 09-2600, 2010 WL 746186, at *2 (3d Cir. 2010) (unreported).

IT IS, therefore, this 12 day of May, 2010,

ORDERED that Defendant’s successive petition for relief under 28 U.S.C. § 2255 [CM/ECF #136] is DENIED.



Jose L. Linares
United States District Judge